



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a cancellation of a 10 Day Notice to End Tenancy for unpaid rent and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Notice to End Tenancy and recovery of the filing fee?

Background and Evidence

The rental unit consists of a basement suite in a single detached home where the landlord and the landlord's wife lived in the upper portion of the house. Pursuant to a verbal agreement, the month to month tenancy started in March 2008. The monthly rent began at \$600.00 and is currently \$900.00. The husband moved out in May 2008 and his wife continued to occupy the upstairs portion of the house. At that time, no specific directions were given to the tenant regarding a new method of paying rent.

The tenant testified that she has paid the rent to the wife every month. She stated that starting in September 2010 the wife hired her to provide daycare services to the couple's children for \$600.00 per month. The tenant stated that to facilitate the transfer of payments, she paid the wife the difference of \$300.00 towards the balance of the \$900.00 monthly rent.

The husband testified that he was the landlord since the start of the tenancy. He stated that the tenant gave him post dated cheques, but that without his consent the tenant changed accounts when he moved out. He stated that although the tenant has paid rent to his wife for the past two years, he has now received legal advice informing him that he is in fact entitled to the rent being paid to him.

The husband served the tenant with a 10 Day Notice to End Tenancy for unpaid rent dated February 2nd, 2011. The husband claimed rent was not paid in full for January and February 2011, and he required the tenant to move out by February 11th, 2011. The tenant argued that she paid the wife on time for the full amount of the rent for both months. The tenant properly applied for dispute resolution to cancel the Notice to End Tenancy for unpaid rent within 5 days. The wife did not attend the hearing.

Analysis

There was no written agreement specifying the terms and conditions of this tenancy. The tenant dealt with the husband as landlord when he lived in the house, and with the wife after the husband moved out. No directions were given to the tenant regarding the tenancy when the husband moved out in May 2008, and the tenant paid rent to the wife thereafter.

The *Residential Tenancy Act* defines landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
 - (i) permits occupation of the rental unit under a tenancy agreement, or*
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who*
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*
- (d) a former landlord, when the context requires this;*

The husband testified that a separation agreement has been finalized, and that a transfer of ownership of the property will occur within two years. Pursuant to the Act, the name on title of a property does not necessarily identify the landlord. Since the start of the tenancy, it was not disputed that the tenant paid rent on time. When the husband moved out in May 2008, the tenant has made all rent payments to the wife and the husband never filed for dispute resolution.

The tenant should not be embroiled in the landlord's differences. I find in the circumstances that the wife acted as landlord to the tenant when the husband moved out. While the husband stated that he has now discovered his legal entitlements, there was no evidence that the tenant acted in bad faith or breached the Act or the verbal tenancy agreement. Until the tenant receives a written tenancy agreement with specific terms, including who the landlord is, the tenancy will continue as previously agreed.

During the hearing, the husband did not make an oral request for an Order of Possession.

Conclusion

I hereby set aside the Notice to End tenancy. The tenancy will continue in full force and effect.

Since the tenant was successful in her application, she is entitled to recover the \$50.00 filing fee, which she may deduct from the next rental payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2011.

Residential Tenancy Branch